

Memo

To: Alan Mitchell
From: Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
Date: December 4, 2002
Subject: Amendments to Mn. Rules Part 4410

I am responding to the October 7, 2002 Request for Comments by the Minnesota Environmental Quality Board concerning Possible Amendments to Rules Governing Environmental Review of Large Electric Power Generating Plants and High Voltage Transmission Lines, Minnesota Rules, Part 4410.7000 to 4410.7500 and Parts 4410.4300, subparts 3 and 6 and 4410.4400, subparts 3 and 6. This response is on behalf of the Minnesota Public Utilities Commission and staff.

Generally, the proposed amendments to Chapter 4410 are very positive. However, we have some concerns we want to bring to your attention. The overriding concern is that the proposed rules run a risk of causing confusion and/or lengthening the decision-making process. We want to work with EQB and its staff to reduce that risk. Our comments will be listed in sequence.

Part 4410.7600

Subp. 2 - The “no other environmental review shall be required at the need stage” language could be construed as limiting the Commission’s ability to require an applicant to file environmental information with the Commission. To make it clear this is not the intention, we would prefer the second sentence in Subpart 2 to be modified as follows:

No other environmental review shall be required at the need stage for high voltage transmission lines and large electric power generating plants except as may be determined to be necessary by the PUC in carrying out its statutory responsibilities.

Part 4410.7630

Subp. 1 - In the second sentence, there is reference to “. . .the general service list maintained by the Public Utilities Commission . . . “ Under the Commission’s Rules of Practice and Procedure (Minnesota Rules, Chapter 7829.0600), general service lists are maintained by the utility. We would recommend that sentence be revised as follows:

At least twenty days prior to the meeting, the EQB shall mail notice of the meeting to those persons on the EQB list maintained pursuant to Minnesota Rules part 4400.1350, ~~and to those persons on the general service list maintained by the Public Utilities Commission under as provided under~~ Minnesota Rules part 7829.0600, and to persons on the service list maintained by the Public Utilities Commission for the certificate of need proceeding.

Subp. 4 and 5 - A determination of completeness by the PUC and the appropriate scope of the environmental assessment clearly are inter-related matters. However, because these are done as separate and distinct processes there is some risk they could occur out of sync. For example, under current rules, the PUC is to make a completeness determination within 30 days of the date a certificate of need application is submitted. The normal practice has been to extend this period but to make the determination as soon as possible. If the EQB Chair's decision comes after the PUC's, alternatives could be selected as part of the environmental assessment that were rejected by the Commission. This would pose a procedural difficulty for the Commission, as it would have before it a record which includes detailed environmental information for an alternative that is not also analyzed for cost-effectiveness, effects on system reliability, energy efficiency, and other possible issues. Any fix of the problem that required a supplement from the applicant would exacerbate the problem of meeting the statutory deadline in Minn. Stat. § 216B.243, subd. 5.

A couple of options for coordinating the Commission's completeness determination and the EQB's environmental assessment scoping determination should be considered. One would have the schedule for these matters determined by the presiding Administrative Law Judge. This would provide for a truly neutral third party to coordinate these important steps in the need process. An alternative would be to set a specific number of days from the Commission's completeness determination for completion of the environmental assessment. For example, 100 days would seem to ample time for most projects. However, this option would also need to allow the EQB the opportunity request extensions from the PUC, if necessary (e.g., on the more controversial projects). Such an arrangement between the PUC and the DOC has worked very well, not only as regards the latter's role as the delegated RGU, but also its role in most other regulatory matters coming before the Commission. The Commission believes this well established and effective system could be used as effectively if the EQB takes on the RGU responsibilities.

At a minimum, the Commission believes the environmental assessment process must be flexible enough to allow it an opportunity to express its views, both as to schedule and the breadth of alternatives to be considered. To provide for this, it would seem reasonable to allow the Commission the ability to appeal the chair's decision to the entire EQB at its next regularly scheduled meeting or at a special meeting.

Subd. 7 - We want to endorse the commitment made by the EQB staff in the biennial transmission rules process advisory group meeting to provide its environmental assessment in that process by March 1 of the even-numbered years. To make this clearer, we recommend the following changes to this subdivision:

The EQB shall complete the environmental assessment in accordance with the schedule determined by the chair. In establishing the schedule for completion of the environmental assessment, the chair shall take into account any applicable statutory deadlines, the number and complexity of the alternatives and impacts to be addressed, and the interests of the public, the applicant, the PUC, and the EQB. In the case of a request for certification of a HVTL under the PUC's transmission planning process, the EQB shall complete the environmental assessment by March 1 of the even-numbered years unless the schedule determined by the PUC allows for a later completion date.

Part 4410.7635

Subp. 1, item B - "Demand-side management" may be a more appropriate term than "conservation," as load management could be a very viable option in certain situations. Another option would be "conservation and load management."

Subp. 1, item F - We believe it would be instructive to clarify what would enter into an analysis of "feasibility." We presume it is meant to refer to technical availability and possibly ability to implement within a given time frame. In any event, a definition would help avoid later arguments about the breadth of that term.

Part 4410.7660

Subp. 1 - It would be preferable from the Commission's perspective if less directive language as regards other agencies (in this case, the PUC) could be employed. We would recommend the following changes:

PUC decision. ~~The Public Utilities Commission shall not make a decision on a certificate of need or a HVTL certification request until the EQB has completed the environmental assessment and provided a copy to the Commission.~~ The environmental assessment must be completed and a copy provided to the Commission before that agency can commence any public hearing or render a final decision on an application for certificate of need or for certification of a HVTL The environmental assessment shall be considered by the PUC in making a final decision on a certificate of need or HVTL certification request. The environmental assessment shall be considered by state and local agencies with authority to review and authorize a LEPGP or HVTL.

Also, it is not clear why the last sentence has been made part of this section.

Subp. 3 - The Commission believes the first sentence of this subpart is unnecessary in light of the requirement of subpart 1. The Commission believes the second sentence of the subpart needlessly goes beyond the scope of these rules and should be omitted. Finally, the Commission recommends that the EQB staff also be required to attend and participate in any prehearing conference set by the PUC or the

Part 4410.7670

Part 4410.7690

Thank you for considering the comments of the Commission in your process. We look forward to working with you on these issues.

Cc: Chairman Scott
Commissioner Garvin
Commissioner Johnson
Commission Koppendrayner
Commissioner Reha
Susan Medhaug, Department of Commerce
Bob Cupit, Department of Commerce